

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 867 of 1997

in

SPECIAL CIVIL APPLICATION No 9251 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TALUKA DEVELOPMENT OFFICER

Versus

RAIJIBHAI HIMMATBHAI PARMAR

Appearance:

MR MUKESH R SHAH for Appellant

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 08/07/1999

ORAL JUDGEMENT(Per;Thakker.J)

#. Admitted. Mr.K.S. Zaveri learned advocate for the respondent waives services of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing.

#. This appeal is filed against the dismissal of SCA No. 9251 of 1995 by the learned Single Judge on 27.3.1996.

#. The respondent was an employee of the appellant. It was the case of the workman that his services were terminated without due process of law. He, therefore, approached the Labour Court and the Presiding Officer of the Labour Court in Reference No. LCG 101 of 1990, passed an ex-parte award on 26.2.1991. By the said award the Labour Court directed the appellant to reinstate the workman with full back wages and continuity in service.

#. Being aggrieved by the said award the appellant preferred an application under Rule 26-A of Industrial Disputes (Gujarat) Rules 1966, for setting aside the said award. The Labour Court, however, after appreciating the facts and circumstances of the case was, held that no ground was made out as to why the appellant remained absent though duly served. It was also observed that there was gross delay on the part of the appellant in approaching the Labour Court for filing the application to set aside ex-parte award and accordingly the application was rejected on 23.10.1994.

#. Dissatisfied by that order SCA came to be filed by the appellant in February, 1995 and the learned Single Judge agreed with the order passed in MCA. He was also of the view that the award passed by the Labour Court could not be said to be contrary to law. Accordingly by an order dated 27.3.1996 impugned in the present LPA, the learned Single Judge dismissed the petition.

6. Against that order, the present LPA was filed . It appears that there was considerable delay of more than one year in filing LPA. It was, however, stated that Rule was issued on Civil Application for condonation of delay and since the respondent did not appear, delay was condoned. Today, the matter is posted for hearing.

7. Mr.Shah, learned advocate for the appellant, contended that as stated in the application as well as in the petition, the appellant or his officers could not remain present when the matter was posted for hearing

before the Labour Court. It was also stated that after the matter was taken up for hearing, the matter was adjourned on two occasions and the award was passed. In the circumstances, ex-parte award deserves to be set aside. Mr. Shah submitted that appropriate order may be passed and ex-parte award may be set aside by directing the Labour Court to pass appropriate order in accordance with law after extending opportunity of hearing to the appellant.

9. Mr. Zaveri, on the other hand, supported the order passed in MCA by the Labour Court and also the order passed by the learned Single Judge. He submitted that even though notices were issued to the appellant, he did not appear before the Labour Court and ex-parte award was passed. Even thereafter there was delay in filing an application for setting aside the ex-parte award. That application was also dismissed on 23.12.94. Thereafter there was no reason not to implement the order of reinstatement granted by the Labour Court but it was not done. SCA was filed in February 1995. Though no interim relief was granted by this Court, the award was just ignored by the appellant. Even though SCA was dismissed on March 27, 1996, till today the workman is not reinstated. Mr. Jhaveri, submitted even if it is assumed for the sake of argument that there is some grievance for the period between 1986 and 1991, from the date of passing the award in February 1991 till July 1999, the appellant could not have ignored the award and flouted an order of reinstatement. He submitted that this is not a fit case for setting aside the award. In the alternative he submitted that if the court is of the opinion that the matter deserves to be remanded for fresh disposal in accordance with law, appropriate directions may be issued so as to safeguard the interest of the workman.

10. In the facts and circumstances in our opinion, the ends of justice would be met if an opportunity is afforded to the appellant so that the appellant may appear before the Labour Court and the Labour Court, after hearing the parties may pass an appropriate order.

11. When only on two occasions, the matter was adjourned and on the third date the award was passed, it would be in the interest of justice if we set aside the ex-parte award on imposing appropriate conditions on the appellant.

12. Accordingly, ex-parte award passed by the Labour Court is set aside. Consequential orders passed in MCA as well as in SCA No.9251 of 1995 are also set aside. The matter will now go back to the Labour Court and the Labour Court will decide the same after affording opportunity to both the parties.

11. For the foregoing reasons, the appeal is partly allowed, with the following directions:

- 1) The appellant will reinstate the respondent workman as early as possible but not later than 1.8.99.
- 2) The appellant will pay an amount of Rs. 2500/(Rupees two thousand five hundred only) towards the costs to the respondent.
- 3) The appellant will pay an amount of Rs. 15,000/- (Rupees fifteen thousand only) towards past payment of wages to the workman on or before 1.8.99.
- 4) The amount ordered to be paid, will be subject to the final result of the reference.
- 5) Since the matter is very old the Labour Court will decide the Reference as early as possible preferably within six months from the receipt of the writ.
- 6) If payment of costs of Rs. 2500/- and part payment of wages of Rs. 15,000/- is not made within the stipulated period or the respondent is not reinstated as per our order, this order will not operate.